



## Parliamentary Crime and Corruption Committee

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Hon Nick Goiran MLC  
Chairman  
Joint Standing Committee on the Corruption and Crime Commission  
Parliament of Western Australia  
Legislative Assembly Committee Office  
11 Harvest Terrace  
WEST PERTH WA 6005



Dear Mr Chairman

### **Submission to Committee's Inquiry into the efficiency and timeliness of the current appointment process for Commissioners and Parliamentary Inspectors of the Corruption and Crime Commission**

The Queensland Parliamentary Crime and Corruption Committee thanks the Joint Standing Committee for its invitation, dated 25 May 2016, to contribute to its inquiry into the efficiency and timeliness of the current appointment process for Commissioners and Parliamentary Inspectors of the Corruption and Crime Commission.

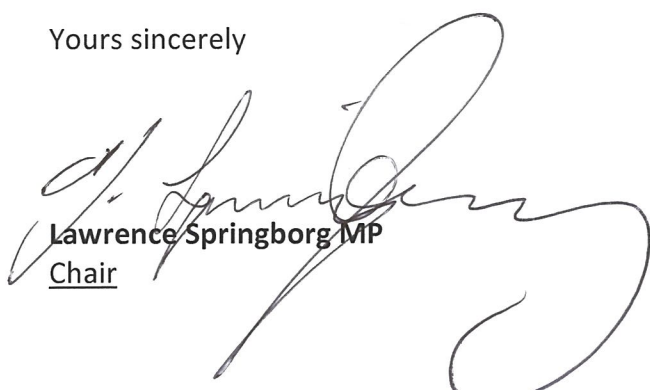
This submission considers:

- the appointment process for commissioners and the CEO of the Crime and Corruption Commission Queensland
- the appointment process for the Parliamentary Crime and Corruption Commissioner, Queensland
- the role played by the Parliamentary Crime and Corruption Committee in the appointment processes, and
- commentary on the current appointment processes.

The Committee trusts that the following information will be of assistance to the inquiry and appreciates the Joint Standing Committee's consideration of this submission, made after the suggested closing date.

Please contact the committee secretariat at [pccc@parliament.qld.gov.au](mailto:pccc@parliament.qld.gov.au) if you require further information.

Yours sincerely

  
**Lawrence Springborg MP**  
Chair

## Background

### ***Parliamentary Crime and Corruption Committee, Queensland***

The Parliamentary Crime and Corruption Committee ('PCCC' or 'the committee') is an all-party committee of the Queensland Legislative Assembly established under the *Crime and Corruption Act 2001* ('the Act').<sup>1</sup>

The committee consists of seven members, with four members nominated by the Leader of the House and three members nominated by the Leader of the Opposition.<sup>2</sup> The Chair of the committee is nominated by the Leader of the House, however by convention and at various times since 2011, the committee has been chaired by a non-government or independent member.<sup>3</sup> Currently the Chair of the committee is a non-government member.

The current membership of the PCCC is as follows:

- Mr Lawrence Springborg MP, Member for Southern Downs, Chair
- Mr Duncan Pegg MP, Member for Stretton, Deputy Chair
- Ms Nikki Boyd MP, Member for Pine Rivers
- Mrs Julieanne Gilbert MP, Member for Mackay
- Mrs Brittany Lauga MP, Member for Keppel
- Mr Steve Minnikin MP, Member for Chatsworth
- Mr Ian Rickuss MP, Member for Lockyer

The committee has a statutory duty to monitor and review the performance of the Crime and Corruption Commission.<sup>4</sup> The committee's functions include participation in the selection of commissioners and the chief executive officer of the Crime and Corruption Commission.<sup>5</sup>

### ***Crime and Corruption Commission, Queensland***

The Crime and Corruption Commission Queensland ('the Commission') is an independent statutory body. Its main purposes are to:

- combat and reduce the incidence of major crime, and
- continuously improve the integrity of, and reduce the incidence of corruption in, the public sector.<sup>6</sup>

After the 1987-1989 Fitzgerald Inquiry into widespread corruption in Queensland, the Criminal Justice Commission was established in 1989 to help restore confidence in Queensland's public institutions. In 2001, the Criminal Justice Commission was renamed the Crime and Misconduct Commission, a statutory body created under the *Crime and Misconduct Act 2001*. In 2014, following extensive review and significant legislative reform, the Commission was renamed the Crime and Corruption Commission and the *Crime and Misconduct Act 2001* changed to the *Crime and Corruption Act 2001*.<sup>7</sup> Legislative reform in 2016 resulted in additional changes to the governance framework of the Commission.

<sup>1</sup> *Crime and Corruption Act 2001*, s 291.

<sup>2</sup> *Crime and Corruption Act 2001*, s 300.

<sup>3</sup> Refer Committee System Review Committee: *Review of the Queensland Parliamentary Committee System*, December 2010, p 23.

<sup>4</sup> *Crime and Corruption Act 2001*, ss 9 and 292.

<sup>5</sup> *Crime and Corruption Act 2001*, s 292(e).

<sup>6</sup> *Crime and Corruption Act 2001*, s 4(1).

<sup>7</sup> Crime and Corruption Commission, '[History](#)', website accessed on 18 August 2016.

The CCC or the Commission is a term often used to describe the body as a whole. However, the membership of the Commission itself consists of five Commissioners.

Since May 2016, the membership of the Commission is to consist of:

- a full-time commissioner who is the Chairperson
- a part-time commissioner who is the Deputy Chairperson, and
- three part-time ordinary Commissioners.<sup>8</sup>

Prior to amendments in 2014, the Chairperson effectively held the role of Chairperson and Chief Executive Officer (CEO). In 2014, the role of the Chairperson and CEO were separated into two positions. The 2014 amendments formally created this separate CEO role and provided that the CEO was also a commissioner.<sup>9</sup>

The Commission continues to have a CEO, currently Mr Forbes Smith. However, 2016 amendments removed the CEO as a commissioner, but retained a five member commission by adding an additional ordinary commissioner.<sup>10</sup>

The current membership of the Commission is as follows:

- Mr Alan MacSporran QC, Chairperson
- Mr Sydney Williams QC, Deputy Chairperson, and
- Mr Marshall Irwin, ordinary commissioner.<sup>11</sup>

As at 29 August 2016, there are two vacancies for ordinary commissioners and no persons have been appointed to act in these positions pursuant to s 237 of the Act. One position has been vacant since 1 March 2016 and the other since the additional, ordinary commissioner position was established on 5 May 2016.<sup>12</sup> Therefore, the Commission is presently constituted by only three of the five members required under the Act.

### **Qualifications for appointment as commissioners and CEO**

Chapter 6, Part 1 of the Act outlines the appointment process for commissioners and the CEO. The appointments are made by the Governor in Council.

The chairperson and the deputy chairperson of the Commission must be a legal practitioner who has served as, or is qualified for appointment as, a judge of the Supreme Court of any Australian state, the High Court or the Federal Court.<sup>13</sup>

Qualifications for appointment of the CEO and ordinary commissioners are less specific. Section 225 of the Act prescribes that a person is qualified for appointment as a CEO or ordinary commissioner, 'if the person has qualifications, experience or standing appropriate' to either perform the relevant functions, or assist the commission to perform its functions.<sup>14</sup>

Ineligible persons are disqualified from appointment as a commissioner or the CEO.<sup>15</sup>

<sup>8</sup> *Crime and Corruption Act 2001*, s 223.

<sup>9</sup> *Crime and Misconduct and Other Legislation Amendment Act 2014*.

<sup>10</sup> *Crime and Corruption Amendment Act 2016*, ss 18-19. Amendments commenced on 5 May 2016.

<sup>11</sup> Crime and Corruption Commission, '[Accountability and leadership](#)', website accessed on 18 August 2016.

<sup>12</sup> Queensland Parliamentary Crime and Corruption Commission Committee (PCCC), *Review of the Crime and Corruption Commission*, Report No 97, June 2016, p 104.

<sup>13</sup> *Crime and Corruption Act 2001*, s 224.

<sup>14</sup> *Crime and Corruption Act 2001*, s 225.

<sup>15</sup> *Crime and Corruption Act 2001*, s 226. 'Ineligible person' is defined in schedule 2 of the Act.

The committee notes that the 2014 reforms removed certain qualifications for part-time commissioners. Qualifications for part-time Commissioners previously included having a demonstrated interest in civil liberties, or qualifications or expertise in public sector management, criminology, sociology, research in crime or crime prevention, or community service or community standards experience regarding the public sector.<sup>16</sup> Of the part-time commissioners in the Commission prior to the 2014 amendments, at least one had to meet a civil liberties qualification and at least one had to be a woman.<sup>17</sup>

### **Recruitment of commissioners and the CEO**

Section 227 of the Act provides that the Minister must advertise nationally for suitably qualified persons for the position of chairperson. For the positions of the deputy chairperson, the CEO and ordinary commissioners, the minister must advertise throughout Queensland.<sup>18</sup>

The committee notes that in Western Australia, the Premier may recommend the appointment of a person for the position of Commissioner from a list of three eligible candidates submitted by a nominating committee.<sup>19</sup>

In Queensland, there is no provision in the Act for an external body to nominate an appointee. For appointment of all senior positions in the Commission – chairperson, deputy chairperson, ordinary commission or CEO – the Minister commences the recruitment process.

The committee notes that, prior to the 2014 reforms, the Minister was required to ask the Bar Association of Queensland and the Queensland Law Society to each nominate two people for the civil liberties commissioner position.<sup>20</sup>

### **Role and functions of PCCC in respect of Commission appointments**

The committee participates in the selection of commissioners and the CEO as prescribed in the Act. The committee is involved in the following ways:

- before nominating any person for appointment as Chairperson, Deputy Chairperson, Ordinary Commissioners or the CEO, the Minister is required to consult with the committee
- the Minister may only nominate a person for appointment to these roles if the nomination is made with the bipartisan support of the committee,<sup>21</sup> and
- following the 2016 amendments, the committee is also to provide its bipartisan support for any acting appointments to these positions, where such an appointment is more than three months.<sup>22</sup>

*Bipartisan support* is defined in the Act as either unanimous support, or the support of a majority of committee members other than a majority consisting wholly of members of the party or parties in government.<sup>23</sup>

<sup>16</sup> *Crime and Misconduct Act 2001*, s 225 (as at 27 November 2013).

<sup>17</sup> *Crime and Misconduct Act 2001*, ss 227 and 230 (as at 27 November 2013).

<sup>18</sup> *Crime and Corruption Act 2001*, s 227.

<sup>19</sup> *Corruption, Crime and Misconduct Act 2003 (WA)*, s 9.

<sup>20</sup> *Crime and Misconduct Act 2001*, s 227 (as at 27 November 2013).

<sup>21</sup> *Crime and Corruption Act 2001*, s 228. After the legislative reforms of 2014 and until May 2016, the committee only had the right to veto an appointment nomination for CEO, but bipartisan support for a nominee was required for all other commissioners. See *Crime and Misconduct and Other Legislation Amendment Act 2014*, s 38.

<sup>22</sup> *Crime and Corruption Act 2001*, s 237.

<sup>23</sup> *Crime and Corruption Act 2001*, schedule 2, definition of 'bipartisan support'.

The committee's practice has been to meet with the Minister's proposed nominee for a particular appointment. The committee then advises the Minister in writing of its decision regarding support for the relevant person.

### **Commentary on the current appointment processes**

The committee recently conducted a statutory review of the Crime and Corruption Commission (the *Review*), tabling the report on 30 June 2016.<sup>24</sup> The committee considered a range of issues in relation to the governance of the Commission, including the current appointment processes.<sup>25</sup>

The Commission made submissions in relation to appointment processes during the *Review*. In order to achieve a 'balance of appropriate skills' within the Commission, the Commission recommended:

*That when appointing a Commissioner, the Minister is to consult with the Chairman to identify:*

- (a) the existing skill sets and experience required of the part time commissioners; and*
- (b) the skills the Commission needs to meet its current and future strategic objectives.<sup>26</sup>*

Currently the Minister is required to consult with the Chairperson only in relation to the proposed nominees for commissioners and the CEO.<sup>27</sup>

The Commission also commented on the appointment process and accountability measures with respect to the CEO:

*The current provisions ... are problematic because they deny the Commission the usual power enjoyed by a conventional board to appoint and dismiss the CEO. In doing so, the checks on Executive power envisaged by the Act are significantly weakened.<sup>28</sup>*

As discussed earlier, amendments made in 2016 removed the CEO as a commissioner. The Commission noted that the 2016 amendments effectively prevent the CEO from acting as a commissioner, and noted:

*Since the separation of the role of Chairperson/CEO, it has become apparent that it would be desirable for a suitably qualified CEO to be able to act as Chairperson, given:*

- the very close day-to-day working relationship between the Chairperson and CEO which means that it would be operationally convenient for the CEO to act as Chairperson from time to time;*
- the fact that ordinary commissioners, including the Deputy Chairperson, are appointed on a part-time basis and have other commitments which may well prevent acting in the role for more than a few days.<sup>29</sup>*

Several other submissions to the *Review* raised issues in relation to the current governance arrangements.

The committee has noted the significant changes to the governance framework of the Commission in recent years. The committee noted in the *Review* that the new governance arrangements had 'not been in place long enough, and particularly since relevant officers were permanently

<sup>24</sup> Such reviews were previously conducted three yearly and following the June 2016 review will be conducted five yearly.

<sup>25</sup> Parliamentary Crime and Corruption Committee: Report No. 97 – *Review of the Crime and Corruption Commission*, June 2016, pages 15-21 and 104-105.

<sup>26</sup> PCCC, Supplementary Submission 14 to *Review of the Crime and Corruption Commission*, p 8.

<sup>27</sup> *Crime and Corruption Act 2001*, s 228.

<sup>28</sup> PCCC, *Review of the Crime and Corruption Commission*, Report No 97, June 2016, p 19.

<sup>29</sup> PCCC, *Review of the Crime and Corruption Commission*, Report No 97, June 2016, p 21.

appointed to these roles, to enable a proper evaluation of these arrangements at this time'.<sup>30</sup> Consequently, the committee recommended 'that the governance framework of the Commission be considered by the Committee during its periodic review of the structure of the Commission within the next 12 months.'<sup>31</sup> A government response to the Committee's report and recommendations is due by 30 September 2016.

As stated above, as at 29 August 2016 there are currently two vacancies for ordinary commissioners and no persons have been appointed to act in those positions.

The government has previously stated (in 2012) that the Minister would 'review the current recruitment and selection processes to ensure the quality of future commissioners continues to be of the highest standard and the recruitment process allows for new appointments to be made in a timely manner'.<sup>32</sup>

In its recent *Review* the committee noted:

*...that the Committee's role in the appointment of Commissioners, in particular the Chairperson of the Commission, has been the subject of much debate and criticism in the previous and current Parliament.*

*The Committee acknowledges that delays in appointing persons to these roles, caused by either the Committee or the Minister, may impact on the Commission being able to perform its functions effectively.*<sup>33</sup>

As noted earlier, the Commission is presently constituted by only three of the five members required. The Commission has raised concerns about the current vacancies with the Committee.

### **Parliamentary Crime and Corruption Commissioner**

The Parliamentary Crime and Corruption Commissioner is an officer of the Parliament who assists the committee in the performance of its functions.<sup>34</sup>

Similar to provisions relating to the appointment of the Parliamentary Inspector of the Corruption and Crime Commission in the Parliament of Western Australia,<sup>35</sup> there is a selection process to appoint the parliamentary commissioner in Queensland. The provisions concerning the appointment of the parliamentary commissioner are set out in Chapter 6, Part 4 of the Act.

The Speaker appoints the parliamentary commissioner with the bipartisan support of the committee.<sup>36</sup> In practice, the selection process is undertaken by the committee. With the Speaker's in principle support, the committee advertises for suitable candidates. The committee is directly involved in shortlisting and interviewing of candidates for the position. The committee advises the Speaker of its support for a particular nominee. It is then a matter for the Speaker to appoint the parliamentary commissioner as an officer of the parliamentary service under the *Parliamentary Service Act 1988*.<sup>37</sup>

<sup>30</sup> PCCC, *Review of the Crime and Corruption Commission*, Report No 97, June 2016, p 21.

<sup>31</sup> PCCC, *Review of the Crime and Corruption Commission*, Report No 97, June 2016, p 21.

<sup>32</sup> Queensland Government, *Parliamentary Crime and Corruption Committee, Report No 86 – Three Yearly Review of the Crime and Misconduct Commission: government response*, May 2012, p 15.

<sup>33</sup> PCCC, *Review of the Crime and Corruption Commission*, Report No 97, June 2016, p 105.

<sup>34</sup> *Crime and Corruption Act 2001*, s 10.

<sup>35</sup> *Corruption, Crime and Misconduct Act 2003* (WA), part 13.

<sup>36</sup> *Crime and Corruption Act 2001*, ss 304-307.

<sup>37</sup> *Crime and Corruption Act 2001*, s 307.

The parliamentary commissioner may be appointed for a term of not less than two years and no longer than five years. The position is part-time, with remuneration and allowances decided by the Speaker.<sup>38</sup>

Mr Paul Favell's term as parliamentary commissioner expired on 21 August 2016. In July 2016, the Speaker gave notice to the Legislative Assembly of the appointment of Ms Karen Carmody as parliamentary commissioner for three years from 22 August 2016.<sup>39</sup> This appointment was given unanimous bipartisan support from the committee pursuant to s 306(3) of the *Crime and Corruption Act 2001*.

The Act also sets out the process for appointing an acting parliamentary commissioner during a vacancy in the office, or during any or all periods when the commissioner is absent, or for another reason, can not perform the duties of the office. Such appointment also requires the bipartisan support of the committee.<sup>40</sup>

### **Commentary regarding the appointment of the Parliamentary Commissioner**

The committee notes the submission to this inquiry from the previous Parliamentary Crime and Corruption Commissioner, Mr Paul Favell, and agrees with his sentiments in regards to the extensive involvement of the committee in the selection process for the parliamentary commissioner. The parliamentary commissioner assists the committee in enhancing the accountability of the Crime and Corruption Commission. Given the working relationship between the committee and the parliamentary commissioner, the committee believes the practical application of the appointment process is very beneficial.

The committee notes that the most recent appointment of Ms Carmody as the new parliamentary commissioner was completed in a timely way and prior to the expiry of Mr Favell's term.

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<sup>38</sup> *Crime and Corruption Act 2001*, ss 309-310.

<sup>39</sup> Queensland Parliament, *Notice of Appointment*, tabled 4 July 2016.

<sup>40</sup> *Crime and Corruption Act 2001*, s 308.